

FILED: RICHMOND COUNTY CLERK 03/12/2015 11:39 AM

INDEX NO. 150215/2015

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 03/12/2015

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ALLSTATE INSURANCE COMPANY
as subrogee of Tracey Zalenski,

Plaintiff,

-against-

ELECTROLUX NORTH AMERICA, INC. and
ELECTROLUX HOME PRODUCTS, INC.,

Defendants.
-----X

INDEX NO.:

SUMMONS

Plaintiff designates
RICHMOND COUNTY
as the place of trial

The Basis of Venue is:
Place of Occurrence


Plaintiff resides at
3075 Sanders Road
Northbrook, Illinois

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
March 12, 2015

COZEN O'CONNOR

BY: 
VIRGINIA MARKOVICH, ESQ.
Attorneys for Plaintiff,
Allstate Insurance Company
as subrogee of Tracey Zalenski
45 Broadway, 23rd Floor
New York, New York 10006
(212) 453-3731

DEFENDANTS' ADDRESSES:

Electrolux North America, Inc.
10200 David Taylor Drive
Charlotte, North Carolina 28262

Electrolux Home Products, Inc.
10200 David Taylor Drive
Charlotte, North Carolina 28262

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ALLSTATE INSURANCE COMPANY as subrogee of
Tracey Zalenski,

Plaintiff,

Index No.

COMPLAINT

-against-

ELECTROLUX NORTH AMERICA, INC. and
ELECTROLUX HOME PRODUCTS, INC.,

Defendants.
-----X

Plaintiff, Allstate Insurance Company, as subrogee of Tracey Zalenski, by and through its undersigned attorneys, Cozen O'Connor, and for its Complaint against Defendants, Electrolux North America, Inc. and Electrolux Home Products, Inc., alleges the following:

THE PARTIES

Plaintiff, Allstate Insurance Company (hereinafter "Allstate") is a corporation duly organized and existing under the laws of the State of Illinois with its principle place of business located at 3075 Sanders Road, Northbrook, Illinois and, at all times relevant hereto, was duly authorized to issue policies of insurance in the State of New York.

1. At all times material herein, Plaintiff's Insured, Tracey Zalenski (hereinafter "Zalenski" or "Plaintiff's Insured", was the owner of the property located at 34A Bunnell Court, Staten Island, New York.

2. At all times material herein, Plaintiff's Insured was insured through a policy of insurance issued by the Allstate, policy number 00043202179, which insured her against, *inter alia*, damages to real and personal property, as well as additional living expenses, loss of use and extra expense.

3. Defendant, Electrolux North America, Inc., is a corporation organized and existing under the laws of Delaware, with a principal place of business located at 10200 David

Taylor Drive, Charlotte, North Carolina 28262. At all times material herein, Electrolux North America, Inc., was engaged in the design, manufacture, assembly, sale and/or supply of clothes dryers for the distribution in the United States.

4. Defendant, Electrolux Home Products, Inc., is a corporation organized and existing under the laws of Delaware, with a principal place of business located at 10200 David Taylor Drive, Charlotte, North Carolina 28262. At all times material herein, Electrolux Home Products, Inc. was engaged in the design, manufacture, assembly, sale and/or supply of clothes dryers for the distribution in the United States. For the remainder of the complaint, Electrolux North America, Inc. and Electrolux Home Products, Inc. will be referred to collectively as "Electrolux."

GENERAL ALLEGATIONS

5. On or about July 19, 2014, Ms. Zalenski was the owner of a Frigidaire brand model FTF530FS1 gas clothes dryer, that was manufactured, designed, assembled and/or supplied by Electrolux.

6. On July 19, 2014, a fire originated in the dryer due to the defective condition of the Electrolux dryer, which fire caused extensive damage to the real and personal property of Ms. Zalenski and caused her to sustain extra expenses.

7. At all times material herein, Ms. Zalenski employed the Electrolux dryer for the use for which it was intended, in the absence of any abuse and/or misuse.

8. As a result of the fire referred to above, and pursuant to the aforesaid policy of insurance, Plaintiff has paid Ms. Zalenski the fair and reasonable cost of repairing and/or replacing the damaged real and personal property, as well as the additional living and extra expenses she incurred on account of the fire.

9. As a result of said payments, the plaintiff is both legally and equitably subrogated to any and all claims that the insured may have against the defendants.

COUNT I

PRODUCTS LIABILITY v. ELECTROLUX

10. Plaintiff incorporates by reference the allegations contained in paragraphs One (1) through nine (9) above, as though more fully set forth at length herein.

11. The fire referred to in paragraph Six (6) above and the resulting damage and destruction to Ms. Zalenski's property were directly and proximately caused by the improper and defective design and/or manufacturing of the dryer, which created an unreasonably dangerous condition in the dryer that posed an unreasonable risk of harm to Ms. Zalenski's property.

12. The aforementioned improper and defective dryer was designed, manufactured, assembled, distributed and sold by defendants, Electrolux, for which defendants, Electrolux, are strictly liable under the laws of the State of New York and under the principles set forth in the Restatement (Second) of Torts § 402A, of for the following reasons:

- (a) the subject clothes dryer was defectively manufactured and/or designed because its normal and intended use posed an unreasonable risk of harm to plaintiff's subrogor and her property;
- (b) the design and/or manufacture of the clothes dryer was legally defective because the product lacked the components needed for its safe operation;
- (c) the product was not accompanied by adequate instructions and/or warnings directed to the product user which would have minimized or eliminated the substantial risks of fire associated with the product's use; and
- (d) the normal, foreseeable and/or intended use of defendant's product, as designed and manufactured, posed a substantial risk of fire which was not reasonably contemplated by plaintiff.

13. As a result of the foregoing acts of defendants for which they are strictly liable, the aforesaid fire occurred causing damages in an amount in excess of One Hundred Forty Five Thousand, Four Hundred Seventy Nine Dollars and 54/100 (\$145,479.54).

WHEREFORE, Plaintiff, Allstate Insurance Company as subrogee of Tracey Zalenski , respectfully requests this Honorable Court enter judgment against Defendants in the amount of

or in excess of One Hundred Forty Five Thousand, Four Hundred Seventy Nine Dollars and 54/100 (\$145,479.54), together with interest, reasonable attorneys' fees and costs of this action.

COUNT II

NEGLIGENCE v. ELECTROLUX

14. Plaintiff incorporates by reference the allegations contained in paragraphs One (1) through thirteen (13) above, as though more fully set forth at length herein. .

15. As a proximate and direct result of defendants, Electrolux's, aforesaid carelessness, recklessness, negligent acts and/or omissions, the fire referred to in paragraph Six (6) above took place and caused severe and destruction to Ms. Zalenski's real and personal property.

16. By reason of the aforesaid negligence, carelessness, gross negligence and negligent omissions of defendants, the fire referred to in paragraph 6 took place and resulted in damage and destruction to plaintiff's insured's property.

WHEREFORE, Plaintiff, Allstate Insurance Company as subrogee of Tracey Zalenski, respectfully requests this Honorable Court enter judgment against Defendants in the amount of or in excess of One Hundred Forty Five Thousand, Four Hundred Seventy Nine Dollars and 54/100 (\$145,479.54), together with interest, reasonable attorneys' fees and costs of this action.

COUNT III

BREACH OF WARRANTY v. ELECTROLUX

17. Plaintiff incorporates by reference the allegations contained in paragraphs One (1) through Fifteen (16) above, as though more fully set forth at length herein.

18. In designing, manufacturing, assembling and/or selling the subject dryer, Defendants, Electrolux, either expressly and/or impliedly warranted that the subject dryer would be merchantable and/or fit for a particular purpose.

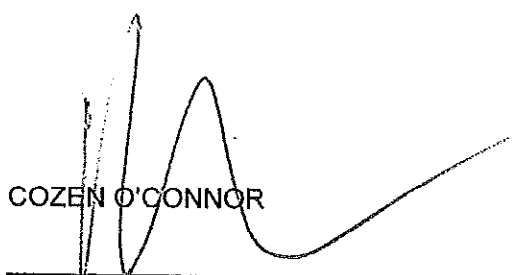
19. Defendants, Electrolux, breached the warranties of merchantability and/or fitness for a particular purpose as heretofore set forth in Counts I and II of the Complaint, which are incorporated herein as though fully set forth.

20. Plaintiff has notified Electrolux North America, Inc. and Electrolux Home Products, Inc. of this fire and requested that Defendants, Electrolux, honor their warranty, but Defendants, Electrolux, have not done so.

21. The breaches of warranty by Defendants, Electrolux, were the direct and proximate cause of the real and personal property damages sustained by Tracey Zalenski.

WHEREFORE, Plaintiff, Allstate Insurance Company as subrogee of Tracey Zalenski, respectfully requests this Honorable Court enter judgment against Defendants in the amount of or in excess of One Hundred Forty Five Thousand, Four Hundred Seventy Nine Dollars and 54/100 (\$145,479.54), together with interest, reasonable attorneys' fees and costs of this action.

Dated: New York, New York
March 12, 2015



COZEN O'CONNOR

Virginia Markovich, Esq.
Attorneys for Plaintiff,
*Allstate Insurance Company as subrogee of
Tracey Zalenski*
45 Broadway
New York, New York 10006
(212) 453-3731



NYSCEF - Richmond County Supreme Court Confirmation Notice

This is an automated response for Supreme Court / Court of Claims cases. The NYSCEF site has received your electronically filed document(s) for:

ALLSTATE INSURANCE COMPANY as subrogee of TRACEY ZALENSKI - v. - ELECTROLUX NORTH AMERICA, INC. et al

Index Number NOT assigned

Documents Received

Doc #	Document Type	Motion #	Date Received
1	SUMMONS + COMPLAINT		03/12/2015 11:39 AM

Filing User

Name:	Virginia Markovich	E-mail Address:	vmarkovich@cozen.com
Phone #:	(212) 908-3731	Work Address:	45 Broadway, 23rd Floor
Fax #:			New York, NY 10006

E-mail Notifications

An e-mail notification regarding this filing has been sent to the following address(es) on 03/12/2015 11:39 AM:

Markovich, Virginia - vmarkovich@cozen.com

NOTE: If submitting a working copy of this filing to the court, you must include as a notification page firmly affixed thereto a copy of this Confirmation Notice.

NYSCEF Resource Center - EFile@nycourts.gov

Phone: (646) 386-3033 Fax: (212) 401-9146 Website: www.nycourts.gov/efile

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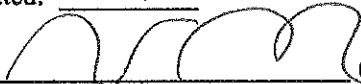
NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent/Represent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment or (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov; mailing address: 60 Centre Street, New York, New York 10007).

Dated: March 13, 2015

 (Signature)

Virigina Markovich (Name)

Cozen O'Connor (Firm Name)

45 Broadway (Address)

New York, New York 10006

212-453-3731 (Phone)

vmarkovich@cozen.com (E-Mail)

To: Electrolux Home Products, Inc.

10200 David Taylor Drive

Charlotte, North Carolina 28262

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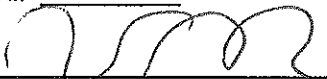
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Dated: March 13, 2015

 (Signature)

Virigina Markovich (Name)

Cozen O'Connor (Firm Name)

45 Broadway (Address)

New York, New York 10006

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